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Defendants
**HIDDEN EMPIRE HOLDINGS, LLC.,
HYPER ENGINE, LLC AND DEON
TAYLOR AND THIRD-PARTY
DEFENDANT ROXANNE TAYLOR**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA



HIDDEN EMPIRE HOLDINGS, LLC; a
Delaware limited liability company;
HYPER ENGINE, LLC; a California
limited liability company; DEON
TAYLOR, an individual,

Plaintiffs,

v.

DARRICK ANGELONE, an individual;
AONE CREATIVE LLC, formerly
known as AONE ENTERTAINMENT
LLC, a Florida limited liability
company; ON CHAIN INNOVATIONS
LLC, a Florida limited liability
company,

Defendants.

DARRICK ANGELONE, an individual;
AONE CREATIVE LLC, formerly
known as AONE ENTERTAINMENT
LLC, a Florida limited liability
company; ON CHAIN INNOVATIONS
LLC, a Florida limited liability company

Counterclaimants,

CASE NO. 2:22-cv-06515-MWF-AGR

Judge: Hon. Michael W. Fitzgerald

**PLAINTIFFS HIDDEN EMPIRE
HOLDINGS, LLC, HYPER ENGINE,
LLC, AND DEON TAYLOR'S AND
THIRD-PARTY DEFENDANT
ROXANNE TAYLOR'S
OPPOSITION TO DEFENDANTS'
EX PARTE APPLICATION FOR (1)
AN ORDER ALLOWING
DESIGNATION OF AN
ALTERNATE REBUTTAL EXPERT,
AND (2) AN ORDER PERMITTING
LATE FILING OF DEFENDANTS'
EXPERT RICK WATTS'
REBUTTAL REPORT**

Complaint Filed: September 12, 2022
Trial Date: December 10, 2024

1 HIDDEN EMPIRE HOLDINGS, LLC; a
2 Delaware limited liability company;
3 HYPER ENGINE, LLC; a California
4 limited liability company; DEON
TAYLOR, an individual,

5 Counterclaim
6 Defendants,

7 DARRICK ANGELONE, an individual;
8 AONE CREATIVE LLC, formerly
9 known as AONE ENTERTAINMENT
LLC, a Florida limited liability
company; ON CHAIN INNOVATIONS
LLC, a Florida limited liability
company,

10 Third-Party Plaintiffs,

11 v.

12 ROXANNE TAYLOR, an individual,

13 Third-Party Defendant
14



I. Introduction.

Aside from the fact that there is no “emergency” warranting an *ex parte* application, Defendants Darrick Angelone, AOne Creative, LLC, and On Chain Innovations, LLC (collectively, “Defendants”) did not comply with their expert discovery obligations under the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) Rule 26 and this Court’s orders in multiple ways. In their initial expert designation on January 22, 2024, Defendants designated George Edwards (“Edwards”) but provided no written report, in violation of Fed. R. Civ. P. 26(a). Pursuant to the Court’s Scheduling Order, rebuttal designations were due on February 20, 2024. Despite the fact that Defendants had Plaintiff Hidden Empire Holdings, LLC’s, Hyper Engine, LLC’s, Deon Taylor’s and Cross-Defendant Roxanne Taylor’s (collectively, “Plaintiffs”) expert reports for over a month, on the day before rebuttal designations were due, Defendants requested Plaintiffs agree to an extension of time to February 26, 2024 for Defendants to serve their rebuttal expert designation. At the time of Defendants’ request, they made no mention of the fact that Edwards would not be the designated expert. When the new deadline arrived, Defendants served no designation at all. Instead, they submitted an unsigned, draft report from a different expert, Rick Watts (“Watts”), as an attachment to counsel’s declaration filed as part of an opposition to Plaintiffs’ pending sanctions motion. By serving an unsigned and incomplete draft report, Defendants again violated Fed. R. Civ. P. 26(a). Plaintiffs did not serve a rebuttal expert designation for Watts until February 27, 2024, which was in violation of both the Court’s Scheduling Order and the parties’ informal agreement. As a result, Watts’ designation was untimely and should be stricken.

Now – nearly 2.5 weeks after the Court ordered deadline lapsed and 1.5 weeks after their informal extension lapsed – Defendants seek extensions and relief under Rule 26(a)(2)(B), which under the law, cannot be granted because there is no good cause to retroactively modify the Scheduling Order to excuse Defendants’ past



violations.¹ Moreover, Defendants are fully aware of the requirement that they seek the Court's approval to move relevant deadlines before those deadlines expired, but they failed to do so this time.² Their present situation is the result of their own dilatory conduct and does not warrant the relief they seek.

In any event, the expert discovery cutoff in this case is not until September 23, 2024, so there are no exigent circumstances that warrant Defendants' filing an *ex parte* application. Defendants should raise their request with the Court by filing a noticed motion.

For the foregoing reasons, and the reasons below, Defendants' application should be denied.

II. Statement of Facts.

On November 8, 2023, the Parties filed a Joint Stipulation To Continue Designation Of Expert Witnesses and Discovery Cutoffs. (**Declaration of Lawrence Hinkle ("Hinkle Decl."), ¶ 4; Dkt. 105.**) In relevant part, the stipulation sought to extend the deadline for the Parties to make their initial designation of expert witnesses to January 22, 2024 and their rebuttal disclosures of expert witnesses to February 20, 2024. (**Id.**) On November 9, 2023, the Court granted the Parties' Joint Stipulation. (Hinkle Decl., ¶ 4; **Dkt. 106.**) Subsequently, on February 7, 2024, the Parties filed an additional Joint Stipulation to Continue Trial and Pretrial Dates. (Hinkle Decl., ¶ 9; **Dkt. 113.**) The parties met and conferred over the new joint deadlines and at no time did Defendants ask to move the deadlines for expert designations, so among other matters, the expert rebuttal disclosure deadline stayed the same as in the Court's prior Scheduling Order. (**Id.**) On February 9, 2024, the Court granted the Parties' additional

¹ Defendants' Initial Expert Witness Disclosures, untimely Rebuttal Expert Witness Disclosure, and belated reports by Watts are currently the subject of Plaintiffs' Objection and Request to Strike Defendants' Initial Disclosure, Rebuttal Expert Witness Disclosure, and Corresponding Reports of Rick Watts. (**Dkt. 128.**)

² Their awareness of the requirement is evidenced by their filing of an *ex parte* application to continue the hearing date on Plaintiffs' pending sanctions motion so they would have more time to prepare their opposition. (**Dkt. 114.**)





1 stipulated request to continue the trial dates. (**Hinkle Decl.**, ¶ 11; **Dkt. 116.**)
 2 Accordingly, Defendants’ deadline to serve expert rebuttal disclosures was February
 3 20, 2024.

4 Consistent with the Parties’ first Joint Stipulation (and the Court’s November
 5 9, 2023 Order), on January 22, 2024, Plaintiffs made their initial expert witness
 6 disclosures. (**Hinkle Decl.**, ¶ 5; **Dkt. 107.**) Also on January 22, 2024, Defendants
 7 served their initial Expert Witness Disclosure, designating Edwards as their computer
 8 science/technology expert. (**Hinkle Decl.**, ¶ 6; **Dkt. 108.**) However, Defendants’
 9 disclosure did not contain a report by Edwards. (**Id.**) On January 23, 2024, Defendants
 10 served a “Supplemental” Expert Witness Disclosure that purported to add a new
 11 damages expert, David Sack, CPA (“Sack”), but that Supplemental Designation also
 12 did not contain reports for either Edwards or Sack. (**Hinkle Decl.**, ¶ 7; **Dkt. 109.**)
 13 Defendants ultimately withdrew their designation of Sack.

14 On February 5, 2024, Plaintiffs filed their Motion for an Order to Show Cause
 15 Why Sanctions Should Not Be Imposed Against Defendants For (1) Violating The
 16 Preliminary Injunction [Contempt] and (2) Spoliation Of Evidence (the “Sanctions
 17 Motion”). (**Hinkle Decl.**, ¶ 8; **Dkt. 110-112.**) Plaintiffs noticed the Sanctions Motion
 18 for March 4, 2024. (**Id.**)

19 On February 8, 2024, Defendants filed an *ex parte* application seeking to
 20 continue the hearing date on Plaintiffs’ Motion from March 4, 2024 to March 18,
 21 2024. (**Hinkle Decl.**, ¶ 10; **Dkt. 114.**) Later that day, the Court granted Defendants’
 22 *ex parte* application. (**Hinkle Decl.**, ¶ 10; **Dkt. 115.**) Accordingly, Defendants’
 23 deadline to file their Opposition to the Sanctions Motion was extended to February
 24 26, 2024. (**Id.**)

25 On February 19, 2024, more than 3.5 months *after* the joint request to extend
 26 the rebuttal expert witness disclosure deadline, and the day before the Rebuttal Expert
 27 designation deadline, Defendants requested, and Plaintiffs granted, a further extension
 28



from February 20th to February 26, 2024 for Defendants to make their rebuttal expert witness disclosure (Defendants did not seek an Order from the Court regarding this extension). (**Hinkle Decl.**, ¶ 12; **Exhibit 69.**) In that correspondence, Plaintiffs' counsel explained that they could not offer a longer extension because Edwards' rebuttal opinions were relevant to the pending sanctions motion and the deadline for Defendants' opposition to that motion was February 26, 2024. (**Id.**) Plaintiffs, under the impression that Defendants would be providing a rebuttal report by Edwards, agreed to the extension. (**Id.**) Defendants did nothing to correct Plaintiffs' belief.

On February 22, 2024, four days before the rebuttal designation and Edwards' report were due, defense counsel e-mailed Plaintiffs' counsel and advised that Defendants were switching experts from Edwards to a new person, Watts. (**Hinkle Decl.**, ¶ 13; **Exhibit 70.**) When Plaintiffs' counsel asked defense counsel to explain the reasons for the switch at this late date, defense counsel provided three different and inconsistent explanations. Plaintiffs did not stipulate to the belated switch from Edwards to Watts. (**Id.**)

On February 26, 2024, Defendants filed their Opposition to Plaintiffs' Sanctions Motion, which contained an unsigned, draft report from Watts that defense counsel attached to the Declaration of Sandra Calin filed in Support of Defendants' Opposition. (**Hinkle Decl.**, ¶ 14; **Dkt. 120.**) On February 27, 2027, after the stipulated deadline for rebuttal disclosures had already passed, Defendants filed and served a Rebuttal Designation naming Watts as their expert. (**Hinkle Decl.**, ¶ 15; **Dkt. 123.**) The belated Rebuttal Designation contained a signed report from Watts. (**Id.**)

III. Argument.

a. There Is No Urgency for Defendants' Ex Parte Application.

Defendants do not identify a single exigent circumstance warranting their *ex parte* application. Under the current Scheduling Order, expert discovery in this matter does not close until September 23, 2024 - another 6.5 months. (**Dkt. 116.**) Defendants

1 have ample time to file a noticed motion in order to seek the relief sought by their *ex*
 2 *parte* application.

3 **b. There Is No Good Cause for the Relief Defendants Seek.**

4 Once the deadlines to disclose experts have passed, a request by a party to
 5 extend the deadlines to do so is construed as a motion to modify the Scheduling Order
 6 under Federal Rule of Civil Procedure, Rule 16. (*See Johnson v. Mammoth*
 7 *Recreations, Inc.*, 975 F.2d 604, 608- 99 (9th Cir. 1992); *see also In re Northrop*
 8 *Grumman Corp. ERISA Litig.*, CV 06- 6213-AB (JCx), 2016 WL 6826171, at *2
 9 (C.D. Cal. April 7, 2016) [treating motion to substitute expert as Rule 16 motion
 10 because motion “effectively asks the Court to modify the prior expert disclosure
 11 deadline . . . and allow them to name a new [] expert...and noting that modifying the
 12 scheduling order will result in the plaintiff complying with Rule 26 and thus not
 13 trigger sanctions under Rule 37], *Deckers Outdoor Corp. v. Romeo & Juliette, Inc.*,
 14 CV 15-2812-ODW (PLAx), 2017 WL 11629880, at *1 (C.D. Cal. Aug. 3, 2017)
 15 [“Because Defendants seek to designate an expert beyond the deadline permitted in
 16 the Court’s Scheduling Order, Defendants must show ‘good cause’ for not doing so
 17 earlier”], *Bagwell v. CBS Broad., Inc.*, CV 19-8423-DSF (ASx), 2021 WL 9145409,
 18 at *1–*2 (C.D. Cal. Oct. 19, 2021) (treating motion to substitute expert as motion to
 19 modify scheduling order under Rule 16).)

20 Pursuant to Rule 16, a scheduling order “may be modified only for good cause
 21 and with the judge’s consent.” (Fed. R. Civ. P. 16(b)(4); *see also* Fed. R. Civ. P.
 22 6(b)(1)(A) (requiring good cause to extend the time to accomplish an act that must be
 23 done within a specified time).) The Rule 16 “good cause” standard “primarily
 24 considers the diligence of the party seeking the amendment.” (*Coleman v. Quaker*
 25 *Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000); *see also Johnson*, 975 F.2d at 609
 26 (“Although the existence or degree of prejudice to the party opposing the modification
 27 might supply additional reasons to deny a motion, the focus of the inquiry is upon the



1 moving party's reasons for seeking modification . . . If that party was not diligent, the
2 inquiry should end").)

3 Here, there are at least two reasons why the relief sought should be denied.
4 First, Defendants were dilatory in seeking relief. Defendants' deadline to designate
5 their rebuttal witness lapsed more than 2.5 weeks prior to bringing the instant *ex parte*
6 application. By their own admission, Defendants knew they wanted to switch experts
7 no later than February 22, 2024. (**Ex Parte Application**, p. 2:26-3:1 and 3:26-28.)
8 Even with Plaintiffs' informal extension of the deadline to designate rebuttal experts
9 to February 26th, Defendants' *ex parte* application was not made until 1.5 weeks *after*
10 the rebuttal designation deadline had lapsed and Defendants knew Plaintiffs would
11 not stipulate to a further extension (because Plaintiffs could not given the direct
12 relevance of expert opinions to its sanctions motion). Such unexcused delay by
13 Defendants falls woefully short of diligence.

14 Moreover, for at least one-month, Defendants knew of "circumstances
15 unforeseen to Defendants" and yet, did nothing to seek the Court's modification of its
16 scheduling order. Tellingly, Defendants fail to state the date it became aware of the
17 "unforeseen" circumstances or identify the nature of any of the circumstances
18 purportedly necessitating the switch. (**Ex Parte Application**, p. 3:10-13.) Defendants
19 must have known of the circumstances when they served and filed their non-
20 compliant Rule 26(a) initial designation of Edwards without any accompanying
21 report. Yet, Defendants did nothing to seek relief from the Court.

22 Because Defendants waited more than one month in seeking an extension and
23 not once sought a Court approved extension of the rebuttal designation deadline,
24 Defendants were dilatory and accordingly, there is no good cause to support their
25 request for an extension, i.e., a modification of the Court's Scheduling Order.

26 Second, Defendants failed to seek a modification of the Court's February 9,
27 2024 Scheduling Order. The only mechanism by which Defendants' late rebuttal
28



1 witness disclosures and service or late reports can be made at this juncture is through
2 the modification of the Court's February 9, 2024 Scheduling Order. This is yet another
3 independent reason why Defendants' *ex parte* application should be denied.

4 **IV. Conclusion.**

5 Based on the foregoing, Plaintiffs respectfully request this Court deny
6 Defendants' *ex parte* application.

7 Dated: March 5, 2024

SANDERS ROBERTS LLP

8
9 By:

Lawrence Hinkle

10 Lawrence Hinkle, Esq.
11 Stephanie Jones Nojima, Esq.
12 Attorneys for Plaintiffs and Counter-Defendants,
13 **HIDDEN EMPIRE HOLDINGS, LLC.,**
14 **HYPER ENGINE, LLC AND DEON**
15 **TAYLOR AND THIRD-PARTY**
16 **DEFENDANT ROXANNE TAYLOR**



PROOF OF SERVICE

(CODE CIV. PROC. § 1013A(3))

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 1055 West 7th Street, Los Angeles, CA 90017. My electronic service address is esanders@sandersroberts.com.

On March 5, 2024, I served the following document(s) described as **PLAINTIFFS HIDDEN EMPIRE HOLDINGS, LLC, HYPER ENGINE, LLC, AND DEON TAYLOR'S AND THIRD-PARTY DEFENDANT ROXANNE TAYLOR'S OPPOSITION TO DEFENDANTS' EX PARTE APPLICATION FOR (1) AN ORDER ALLOWING DESIGNATION OF AN ALTERNATE REBUTTAL EXPERT, AND (2) AN ORDER PERMITTING LATE FILING OF DEFENDANTS' EXPERT RICK WATTS' REBUTTAL REPORT** on the interested parties in this action as follows:

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☒ **VIA ELECTRONIC MAIL** I caused the documents to be transmitted electronically through the approved vendor for e-filing by electronic service on the party(s) identified on the attached service list using the e-mail address(es) shown I did not receive, within a reasonable time after transmission, any email or other indication that the transmission(s) were unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 5, 2024, at Los Angeles, California.

Elizabeth Sanders

(Type or print name)


(Signature)

